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TOTAL NUMBER OF PAGES: 8 INCLUDING COVER SHEETShould there be any problems with the transmission of the following document(s), please  
contact Denise Rose at telephone number (617) 439-4444.RE: INVENTOR: LYMAN  
SERIAL NO.: 09/417.428

Practitioner's Docket No. 48641 (71923)**PATENT****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: Daniel F. Lyman  
Application No.: 09/417,428 Group No.: 3712  
Filed: October 13, 1999 Examiner: N. Cegielnik  
For: ENTERTAINMENT AND STRESS RELIEF DISK

[ ] \*Patent No.: Issue Date:

*\*NOTE: Insert name(s) of all inventor(s) and also title for patent.*

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Attorney Docket No. 48,641 (71923)

*#22  
Spa/09  
R/11/02***IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

APPLICANT: D.F. Lyman  
U.S.S.N.: 09/417,428 / GROUP: 3712  
FILED: October 13, 1999 EXAMINER: U. Cegielnik  
FOR: ENTERTAINMENT AND STRESS RELIEF DISK

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FAX 703-305-3579  
Att: Examiner U. Cegielnik  
Art Unit 3712

Date: May 24, 2002

By: Denise Rose  
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Sir:

**REQUEST FOR RECONSIDERATION**

In the Office Action dated March 8, 2002, claims 1-17 are pending and all claims are rejected. Applicant requests reconsideration for at least the reasons discussed herein.

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The present invention is directed to and claims an amusement and stress relief device formed of a flexible, resilient polymeric material having a center portion with a concave/convex shape, wherein the device has **two stable equilibrium positions** wherein a first equilibrium position comprises a first surface having a concave shape and a second surface having a convex shape and a second equilibrium position is the reverse or inverse of the first equilibrium position and comprises the second surface having a concave shape and the first surface having a convex shape, whereby manual manipulation of the device inverts the first and second surfaces between the two stable equilibrium positions, as set forth in claim 1. In other words, the second stable equilibrium position is the reverse or inverse of the first stable equilibrium position. The device of the present invention **requires** manual manipulation to be moved from one stable equilibrium position to the other, no matter which stable equilibrium position it is in. Further, the two equilibrium positions have substantially the same shape or appearance.

The nature of the present invention can be readily seen by examining the samples of the device that were previously submitted.

Claims 1-17 are rejected under 35 U.S.C. §103(a) over newly applied Kubiatowicz (US 4,152,863). Kubiatowicz describes

[a] popper toy comprising a dish shaped wall of thin flexible resilient polymeric material. The popper wall has a plurality of concentric portions including outer portions providing a generally rigid support structure, and central portions providing a domed structure adapted to be deflected under moderate thumb pressure. When the domed structure is deflected a portion of its outer surface will temporarily

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change from convex to concave. The central domed structure **will** then **suddenly recover its original shape** a short time after the pressure is released, thereby suddenly returning the portion of its outer surface to convex so that the popper will leap into the air if its outer surface is positioned against a firm surface as the domed structure recovers.  
[Abstract; emphasis added.]

It is not seen how Kubiatowicz describes or suggests that the device has two stable equilibrium conditions. Indeed, Kubiatowicz specifically teaches that the deflection is temporary and the popper toy automatically recovers the original shape. Thus, the only stable equilibrium position is the original shape.

Further, by looking at the drawings, particularly FIGs. 3 and 4, one can readily see that there is no second equilibrium position, much less a second equilibrium position that provides a shape that is **substantially the same** as the shape of the device in the first equilibrium position.

Further, there is no teaching or suggestion in Kubiatowicz that external force should be applied to the popper toy to invert it into a second stable position. It is not seen how one of ordinary skill in the art would find it obvious to invert the popper toy of Kubiatowicz. Indeed, such an inversion would make the popper toy totally ineffective for its intended purpose.

Further, even if one were manually to invert the popper toy of Kubiatowicz, the inverted shape would be substantially dissimilar to the original shape.

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On the contrary, in the device of the present invention, the first equilibrium position has substantially the same shape as the second equilibrium position, as illustrated in FIG. 2 by the dashed line. To reestablish the original equilibrium position requires pressing inwardly on the second surface to reinvert the device from the second equilibrium position to its original equilibrium position. Because both positions are stable, it makes no difference in which position the device is - the device looks substantially the same.

Further, when the present device is inverted from its first position, it will not suddenly recover its original shape as does the popper toy of Kubiatowicz.

Samples of the device of the present invention were submitted previously to aid the examiner. As can be seen, there is no difference between the sample device in the first or the second equilibrium position. That is not true for the device of Kubiatowicz (see FIGs. 3 and 4).

Thus, the present device has substantially different structure from that of Kubiatowicz. It is not seen how the present invention would have been obvious to one of ordinary skill in the art from the teachings of Kubiatowicz.

Claims 2-17 are patentable over Kubiatowicz for at least the reasons discussed above with respect to claim 1.

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With respect the particular dimensions set forth in claims 2-8, the polymeric material as set forth in claims 9 and 16, the surfaces having a texture as set forth in claims 10-13, and the scent being added as set forth in claim 14, the examiner concludes that such would have been obvious in view of Schuster "for the purpose of making the device more amusing and interesting."

It is not seen where there is any suggestion that one of ordinary skill in the art would desire to make the popper toy of Kubiatowicz *more amusing and interesting*. Because the structure and function of the Kubiatowicz device is so different, it is not seen how it would have been obvious to one of ordinary skill in the art to use the claimed dimensions and materials for Applicant's stress relief disc, which has a totally different structure and function.

For example, in the embodiment set forth in claim 8, the device has a domed peak formed in the center portion, the peak having a height  $h_p$  relative to a plane containing the peripheral portion, and the ratio of  $h_p$  to  $d$  is **not greater than** about 1/3. It is not seen how this claimed device would have been obvious from Kubiatowicz.

Regarding the textured surface as set forth in claims 10-13 or the scent added to the material as set forth in claim 14, there is suggestion in Kubiatowicz for any reason to use a textured surface or a scent for the popper toy. Again, it is not seen how it would have been obvious to one of ordinary skill in the art to use a textured

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surface on or apply a scent to the popper toy. There is no suggestion whatsoever that the Kubiatowicz device should be *more amusing and interesting*. That suggestion appears to be total conjecture by the examiner and unsupported by anything of record or any scientific logic.

Thus, it is not seen how the present invention would have been obvious to one of ordinary skill in the art in view of Kubiatowicz or any other prior art of record, whether each taken alone or in any combination.

In view of the discussion above, it is respectfully submitted that the present application is in condition for allowance. An early reconsideration and notice of allowance are earnestly solicited.

Respectfully submitted,

  
George W. Neuner (Reg. No. 26,964)

Date: 24 May '02  
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